



BRIEFING: OCTOBER 14, 2014, BOARD MEETING AGENDA ITEM #4

TO: Chairman Richard and Board Members

FROM: Tom Fellenz, Chief Counsel

DATE: October 14, 2014

RE: Consider Approval of Amendment to Nossaman Contract for Time and Budget

Background

The California High-Speed Rail Authority (Authority) strives to best serve the public interest by delivering all aspects of the California High-Speed Train System on schedule, at the lowest possible cost, and with a quality that meets or exceeds acceptable industry and government standards. Legal services and support is a key component of ensuring the Authority meets those goals.

The Authority's legal service needs originally were met nearly entirely by the Attorney General's office. As the Authority's program expanded both in size and subject matter, so did its legal service needs. Accordingly, the Authority expanded from no in-house counsel to a present staff of five. The Authority has also seen increased need for services from the Attorney General's office, particularly in litigation, which the Attorney General's office has been meeting with minimal support from outside legal counsel. The Attorney General's office also has provided non-litigation advice in the areas of CEQA compliance, Open Meetings Act compliance and Prop 1A, among other areas.

In 2009, however, the Authority (and Attorney General's office) recognized that the Authority needed specialized legal services not available from the Attorney General's office. Broadly speaking, the specialized services involved necessary environmental permitting from federal and state agencies (permits being prerequisites to construction) and assistance with the complex design-build construction procurement process. The Nossaman LLP firm (Nossaman) was engaged to assist the Authority with these matters. As the Authority's needs expanded into other technical areas, such as Surface Transportation Board (STB) advice and filings, Nossaman has been available and well-equipped to assist. It was contemplated that the scope of the legal work and budget would be modified by amendments to accommodate the increasing legal requirements of the program.

The original Nossaman contract HSR 08-10 was effective from 2009 – 2011 and has been extended through the amendment process. Pursuant to Board Resolution #HSRA 12-14, approved on April 5, 2012, and Board Resolution #HSRA 13-18, approved on August 1, 2013, and other contract amendments within the Chief Executive Officer's amendment authority, the current Nossaman legal services contract budget is \$17,000,000.00. The contract will expire on June 30, 2015. By way of context, the Authority procurements Nossaman has assisted with, or is assisting with, total approximately \$6 billion – including issued procurements and procurements still in development. With regards to environmental permitting, the High-Speed Rail project will be the single largest infrastructure project ever permitted in California.

At this time, the services of Nossaman remain necessary. Staff recommends that their services be extended through June 30, 2017 to ensure program consistency and institutional knowledge retention, which are critical to project delivery. The firm will continue to provide assistance with most of the Central Valley procurement and contract administration support, trainset procurement, general strategic planning and delivery advice, environmental permitting and implementation in the Central Valley and in Southern California, advice regarding Federal Railroad Administration (FRA) regulatory approvals and support with STB matters. This is set forth below in more detail.

Discussion

In order to amend the Nossaman contract to enable the legal services to proceed in an uninterrupted manner, Authority Board action is necessary. Therefore, staff recommends that the Board authorize the Chief Executive Officer, or his qualified designee, to negotiate a contract amendment with Nossaman through June 30, 2017 in the amount of \$10 million (bringing the total contract amount to \$27 million). This increased amount also represents a materially lower projected monthly expenditure rate for Nossaman as compared to the past year, although staff does not expect a reduction in overall legal workload generally; with current increased Authority legal staff and increased efficiencies and oversight, staff believes the Authority's interests will be protected despite the lower expenditure rate.

Authority staff has thoroughly analyzed the scope and budget recommended above, taking into consideration anticipated legal needs, costs and program requirements. Using this evaluation, the anticipated scope of the work to be performed by Nossaman is as follows:

- Provide legal assistance related to the trainset procurement process and contract
- Construction Package contract and procurement legal advice
- Legal work related to Federal Surface Transportation Board authorizations and related to the Interstate Commerce Commission Termination Act of 1995 (ICCTA)
- Strategic planning legal advice
- Environmental permitting legal support – *i.e.*, state and federal environmental permits and mitigation planning

- Legal analysis related to FRA regulatory requirements

Nossaman is a well-respected law firm with over seventy years of experience delivering the highest quality legal expertise and policy advice for clients across California and the nation, particularly for large infrastructure projects. The firm provides practical, innovative and cost-effective advice relative to a variety of practice areas, including environmental permitting, design-build construction and project delivery.

Nossaman has a longstanding commitment to community involvement and pro bono work, diversity initiatives and environmentally-friendly practices in the legal profession and community. During its contract term, the firm also has continued to strive to meet the Authority's Board-adopted 30 percent Small and Disadvantaged Business (SBE) participation goal. The requested contract amendment will continue to include the 30 percent SBE participation goal adopted by the Authority Board of Directors.

Lastly, please note that state laws treat the procurement of legal services differently than procurement of most other services, and specifically exempt legal services from competitive bidding requirements. However, the Authority staff strives to obtain the best value out of legal services the Authority hires, balanced against the need to protect the Authority against business and legal risks.

Recommendation

It is the recommendation of Authority staff that the Board approve the amendment of the Nossaman legal services contract for time and budget. It is also recommended that the Board adopt a Resolution approving an amendment of the Nossaman contract in the amount of ten million dollars (\$10,000,000.00) through June 30, 2017.

Attachments

- Resolution #HSRA 14-30
- April 12, 2012 Board Memo regarding Approval of Amendment to Nossaman LLP Contract
- August 1, 2013 Board Memo regarding Proposal to Amend the Nossaman LLP Contract for Legal Services